IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.133 OF 2005

Fashion Exim India Pvt. Ltd. ..Petitioner.

Vs.

Chintamani Ambolkar & anr. ..Respondents.

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Mr. Ashish Kamat with Mr. G.D'Silva for the Petitioner.

Mr. Rajesh Gehani with Ms. Farida Contractor for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

10th February, 2005.

P.C. :

1. This Petition arises out of an award of the Labour Court dated 21st September, 2004 on a reference to adjudication. The Labour Court has held that the termination of the First Respondent with effect from 9th October, 1996 was illegal. Consequently, the Petitioner has been directed to

reinstate the First Respondent with full backwages and continuity of service.

2. The Petitioner carries on the business of manufacturing ready-made garments for export. The First Respondent in his statement of claim before the Labour Court claimed that he had been working with the Petitioner as a checker-cum-supervisor since November 1992 and that his last drawn salary was Rs.2,100/- per month. In the statement of claim it was specifically averred that the employer has not issued any appointment or confirmation letter to any employee. It was stated further that the First Respondent was a permanent employee; that he was carrying out the work of checking garments in accordance with the norms laid down by the Directors of the Petitioner; that the company employed over 60 workers in various designations such as checkers, tailors, ironman, helper, sorter and supervisors. The First Respondent then averred that he was signing the wage-attendance register maintained by the Petitioner and that the Petitioner did not maintain any other record other than the attendance register in respect of employees employed in temporary and piece rated

capacities. The case of the workman was that on 7th August, 1996 he was paid his salary and then orally directed not to report for work from the next day. Thereafter when he reported for work on 8th and 9th October, 1996 he was not allowed to do so by Shri. Kishor Kataruka, one of the Directors of the company who informed him that his services have been terminated with immediate effect. No letter of termination was issued and the case of the workman before the Labour Court was that he had been unlawfully terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947.

3. In the written statement, the case of the Petitioner was one of complete denial. The Petitioner averred that the Respondent workman was never in the employment of the company and that there existed no relationship of employer and employee at any point of time.

4. Evidence was adduced before the Labour Court by the First Respondent who stepped into the witness box and by two other co-workmen who deposed in support of the case of the workman. On behalf of

the employer evidence was adduced of two witnesses including the Production Manager and a Director of the company. On an appreciation of the evidence, the Labour Court came to the conclusion that the Respondent workman had established that he had been in the employment of the Petitioner. Once this was established, the admitted position was that there was in fact no termination in accordance with law. An order of reinstatement and backwages has been passed.

5. The decision of the reference turns entirely on an appreciation of the evidence which was adduced on behalf of the parties before the Labour Court. In the circumstances, while assailing the award of the Labour Court the submission which has been urged on behalf of the Petitioner is entirely devoted to the manner in which the Labour Court has appreciated the evidence. Before dealing with the submissions, it has become necessary to advert to this position, since the submissions in effect amount to a request to the Court to reappreciate the evidence. Now consistent with the limitations on the exercise of the jurisdiction of this Court under Article 226, particularly when the Court is

called upon to issue a Writ of Certiorari, the Court must have due regard to the settled position in law. The jurisdiction in Certiorari is not in the nature of an appellate power which the Court wields and therefore, the Court would not substitute its own view on the appreciation of evidence for the view of the Labour Court. Undoubtedly, in an appropriate case even a finding of fact can be interfered with if it is based on no evidence or where, the appreciation of the evidence is perverse in the sense that material admissions in the evidence have been ignored or where the finding contains ex facie an error apparent on the face of the record which has resulted in a grave miscarriage of justice.

6. Consistent with this legal position which is well settled, it will now be appropriate to consider the submissions which have been urged. On behalf of the Petitioner it has been submitted that:

i) In the statement of claim, the workman had come with the plea that the company was maintaining a muster-cum-attendence register

and that he was signing the muster roll when the salary was paid. However, in the course of his evidence, the workman deposed that during the last two years before termination, his signatures were obtained on vouchers and that prior to that period payment was noted on the muster roll-cum-wage register. This, it was urged, amounted to a material variation in the case of the workman and the story of the vouchers came in evidence for the first time;

ii) The second witness who deposed in support of the case of the workman, who claimed to be a co-workman was the nephew of the workman and similarly the third witness had in the course of his examination admitted that he had been called to give evidence by the advocate;

iii) The Labour Court had incorrectly placed reliance on an alleged discrepancy in the name of the Production Manager and it was urged that a verification of the written statement as well as the muster-roll which was produced before the Court would show that

the name of the Production Manager was Arun Purohit and not Arun Puri;

iv) Finally, it was urged that the muster roll that was produced before the Labour Court did not bear the name of the First Respondent. Hence, the relationship of employer and employee had not been established.

7. In considering these submissions which have been urged on behalf of the Petitioner, it would at the outset be necessary to make a note of the undisputed factual position which emerges with reference to the pleadings of the parties before the Industrial Court. Two important aspects of the statement of claim have not been denied in the written statement. These are - (i) the statement of the workman in paragraph 1 of the claim statement that the employer had not issued any appointment or confirmation letter to any employee; and (ii) that the employer was not maintaining any record other than the attendance register in respect of employees employed on a temporary and piece rated basis. The primary foundation of the submissions before the Labour Court was that the

name of the workman was not borne on the muster roll which was produced before the Labour Court. In weighing this aspect of the matter, the aforesaid admitted position would have to be borne in mind. The workman stepped into the witness box and his examination-in-chief as well as cross examination was recorded on 10th October, 2003. In the course of his examination-in-chief the workman stated that his signatures were in the last two years, prior to the termination, being obtained on a voucher and that prior thereto payment was caused on the muster roll-cum-wage register. The workman stated that Mr. Arjun Singh who was the Production Manager used to record the attendance of the workmen. Now it is common ground, that the alleged muster roll was produced on behalf of the employer on 13th October, 2003 after the workman deposed in evidence. It must be noted, that the case of the workman in the course of his evidence was that two years prior to his termination (which would mean prior to October 1994) payment was being made to him on the muster roll-wage register, but thereafter payment was being made on the basis of a voucher, meaning thereby that no record would be maintained. In the background of this evidence of

the workman, the muster roll which was produced on behalf of the employer assumes significance because the muster which is produced is only for the period after July 1995. For reasons best known to the employer, the muster for the period prior thereto was not produced before the Court despite the specific deposition of the workman. If the evidence of the workman had to be displaced on the part of the employer, the muster for the period prior to July 1995 ought to have been produced on the record. But for reasons best known to the employer this is not done.

8. The matter does not rest, however, with the non-production of the muster roll for the period prior to July 1995. The workman gave evidence to the effect that Arjun Singh was the Production Manager who used to record attendance. The same corroborative evidence appears in the deposition of the second witness Krishna Ambolkar who supported the case of the workman. Arun Purohit, the Manager who deposed on behalf of the Petitioner was specifically cross examined with reference to who the Production Manager was. He initially admitted that Arjun Singh was a Technical Production

Manager. Subsequently, he however claimed that there was no Technical Adviser and no Production Manager for the company. The Manager who deposed on behalf of the employer admitted before the Court that there are nearly 14 or 15 cases relating to other employees which are pending before the Labour Court and these cases have been filed by Akhil Bharatiya General Kamgar Union which was functioning in the company. The Manager admitted that in almost all cases which are pending before various Courts, the company has filed a written statement with a common defence that the employee was not an employee of the company. The witness admitted that it was true that the company had no attendance and attendance card or pay sheet relating to the workers in the category of tailor, checkers, pressman and packers. That being the position, it is apparent that this is a case of an employer who had for obvious reasons, in order to defeat the provisions of labour legislation, chosen not to maintain any attendance record or even pay sheets relating to workmen falling in several categories including that in which the workman in this case claims to have been employed. The witness for the employer admitted that on occasion

the company had got work done through contractors without necessarily executing any contract agreement. The witness was unable to state as to whether the contractors were registered and he stated that no licence was obtained under the Contract Labour (Regulation and Abolition) Act, 1971. The company had never demanded a list of workers from the contractor nor had it checked the list of workers working with the contractor.

9. Reference has already been made earlier to the fact that the muster roll which was produced by the Petitioner was only for the period after July 1995 despite the deposition of the workman that for a period of two years prior to his termination on 9th October, 1996 he was being paid on the basis of vouchers. A certified copy of the muster roll which was produced before the Industrial Court has been placed on the record by counsel for the First Respondent in these proceedings as well. The muster roll contains a list of only 10 employees. The Manager who gave evidence on behalf of the employer was cross examined in regard to the designations of these 10 employees. Those employees fell in the category of (1) Technical

Supervisor; (2) Clerk; (3) Documentation; (4) Technical Supervisor; (5) Typist; (6) Peon; (7) Accountant; (8) Computer Operator; and (9) Merchandiser. The second witness for the company deposed in the course of his examination-in-chief that in carrying out the business of exports of ready-made garments, the company procured orders, manufactured garments and had to carry on activities of despatch, documentation and realization of sale proceeds. The witness stated that while carrying out the activity of manufacturing garments, the company carried on the work of fabric cutting, stitching, washing, pressing and packing. The witness stated that all manufacturing activities were carried out by job workers. Now it is apparent from this evidence of none other than the Director of the company that the list of 10 workers that was produced in the form of a muster roll was obviously a partial list and the total number of workers employed by the company is much greater. The averment in the statement of claim that the company in fact employed more than 60 workers was not denied in the written statement. Therefore, what emerges both on the basis of the pleadings and evidence is that

whereas the company employed a large body of workers, a charade was made before the Labour Court by producing a muster roll and, it is obvious that the muster roll contains a list of only 10 members of the office staff. The company which carried on the business of manufacturing, procurement of orders and allied activities in connection with export, obviously had a much large work force in respect of whom there were neither any appointment orders nor a muster roll.

10. I have considered the evidence in a considerable degree of detail in order to assess whether there is any infirmity in the finding which has been arrived at by the Labour Court. On reviewing the evidence, it is more than apparent that the conclusion of the Labour Court is manifestly a correct conclusion and one which in any event does not warrant interference in exercise of the jurisdiction under Article 226. The entire defence of the employer was lacking in bonafides and rectitude. Though it was faintly submitted that the Respondent was not a workman, the submission has not seriously been substantiated. A person who is employed in a supervisory capacity

has to oversee the work of others. A supervisor has the authority to bind his employer within the limits of his authority. The indices of the exercise of supervisory authority, such as the recommending of leave applications, are totally absent here. The Respondent was a skilled manual worker. This is obviously an employer who has chosen not to maintain statutory records with a view to defeating the rights of the workmen and to deprive them of the elementary protections which are conferred by industrial legislation.

11. The Court is informed that the Petitioner has deposited an amount of Rs.75,000/- in the Labour Court during the pendency of the proceedings. The First Respondent would be at liberty to withdraw the aforesaid amount which shall be adjusted against the award of backwages. There is, therefore, no merit in the Petition which is accordingly rejected.

Stay refused.